

1
2
3
4
5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 ESTATE OF BRIAN WARE,

9 Plaintiff,

10 v.

11 ALLSTATE INSURANCE
12 COMPANY,

Defendant.

C17-1720 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Allstate's Motion for Partial Summary Judgment, docket no. 15 (the
16 "Motion"), is GRANTED. Under Washington choice of law rules, *See Bush v.*
17 *O'Connor*, 58 Wn. App. 138, 143–45 (1990), South Dakota law applies to whether the
18 Estate of Brian Ware (the "Estate") is "legally entitled to recover" from the underinsured
19 motorist ("UIM") under the UIM policy in question. *See* Exhibit A to the Declaration of
20 Michelle Welch, docket no. 17-1 (the "UIM Policy"), at 12. The purpose of UIM
21 coverage is to place the insured in the same position as if a tortfeasor carried adequate
22 liability insurance. *Wood v. Mutual of Enumclaw Ins. Co.*, 97 Wash. App. 721, 726
23 (1999). An injured party is not entitled to be put in a better position by having been
struck by an uninsured motorist as opposed to an insured motorist. *Dayton v. Farmers*
Ins. Grp., 124 Wn.2d 277, 281 (1994). As a result, the Estate's rights under the Policy
will be governed by what it is "legally entitled to recover" under South Dakota law. *See*
State Farm Mut. Auto. Ins. Co. v. Fernandez, 582 F. Supp. 1283, 1286–87 (D. Haw.
1984), *aff'd*, 797 F.2d 1299 (9th Cir. 1985) (the term "legally entitled to recover
damages" refers only to liability disputes, not coverage disputes).

1 (2) The Estate’s claim for violation of the Insurance Fair Conduct Act (IFCA),
2 *see* Amended Complaint, docket no. 11, at ¶¶ 5.1–5.3, is dismissed with prejudice. *See*
3 *Madera West Condo. Ass’n v. First Specialty Ins. Corp.*, No. C12–0857–JCC, 2013 WL
4 4015649, at *4 (W.D. Wash. Aug. 6, 2013) (Coughenour, J.) (compliance with the
5 statutory notice provision of RCW 48.30.015(8)(a) to give notice to both the insurer and
6 the State Insurance Commissioner, is a condition precedent to an IFCA lawsuit); *MKB*
7 *Constructors v. Am. Zurich Ins. Co.*, 49 F. Supp. 3d 814, 840 (W.D. Wash. 2014).

8 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
9 record.

10 Dated this 1st day of June, 2018.

11
12
13
14
15
16
17
18
19
20
21
22
23
William M. McCool

Clerk

s/Karen Dews

Deputy Clerk